

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TOMMIE BYAS,

Petitioner,

Civil No. 2:17-cv-10387
Honorable Nancy G. Edmunds

MITCH PERRY,

Respondent.

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT [Dkt. 7]

Before the court is Petitioner's second motion for relief from judgment. On February 15, 2017, this Court summarily denied Petitioner's petition for a writ of habeas corpus on the grounds that it constituted a prohibited successive application for habeas relief under 28 U.S.C. § 2244(b)(1) which raised claims identical to ones presented in a prior habeas case. The Court also denied a certificate of appealability and denied permission to appeal in forma pauperis. Petitioner filed a motion for relief from judgment that was denied because it simply re-raised the same claims rejected by the Court in its opinion denying his petitioner. See Dkt. 5. Before the Court is Petitioner's second motion for relief from judgment. Again the motion simply raises the same claims based on the same authority that the Court has already rejected.

Relief from judgment may be granted pursuant to Rule 60(b)(1) where the Court's judgment was the result of "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). A motion for relief under Rule 60(b)(1) is intended to provide relief to a party in two instances: "(1) when the party has made an excusable litigation mistake or an attorney in the litigation has acted without authority, or (2) when the judge has made a substantive mistake of law or fact in the final

judgment or order.” *United States v. Reyes*, 307 F.3d 451, 455 (6th Cir. 2002). “As such, Rule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor by presenting new explanations, legal theories, or proof.” *Jinks v. Allied Signal, Inc.*, 250 F.3d 381, 385 (6th Cir. 2001). As with Petitioner’s previous motion, the Court can discern no basis in Petitioner’s current motion undermining the Court’s disposition of the case.

Based upon the foregoing, **IT IS HEREBY ORDERED** that Petitioner’s Motion for Relief From Judgment [Dkt.7] is **DENIED**.

Dated: *12-13-17*

Nancy Edmunds
Hon. Nancy G. Edmunds
United States District Judge